

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

AMERICAN TILE AND MARBLE CO.,

Plaintiff,

vs.

ALL GRANITE & MARBLE CORP.,

Defendant.

8:13CV89

ORDER

This matter is before the court on the plaintiff's Amended Motion for Class Certification (Filing No. 47) and the parties' Joint Status Report (Filing No. 49). The parties report the stay in this case should remain in effect pending a disposition on the merits of the defendant's administrative petition before the Federal Communications Commission. The plaintiff filed the Amended Motion for Class Certification (Filing No. 47) with the both parties' understanding it was filed out of an abundance of caution at an early stage of litigation to avoid any attempt by the defendant to "pick off" the plaintiff with an offer of judgment. *See Keim v. ADF Midatlantic, LLC*, No. 12-80577-CIV, 2013 WL 3717737, at \*9 (S.D. Fla. July 15, 2013) ("Defendants' Rule 68 offer of judgment provides Plaintiff full relief in this case. Because Plaintiff had not moved for class certification at the time that offer was made, this case is consequently moot."); *Damasco v. Clearwire Corp.*, 662 F.3d 891, 896 (7th Cir. 2011) ("Class-action plaintiffs can move to certify the class at the same time that they file their complaint. The pendency of that motion protects a putative class from attempts to buy off the named plaintiffs."). The parties agreed to hold briefing of the motion in abeyance pending further development of the case. Due to the lengthy stay, the plaintiff's motion will be terminated for statistical purposes, and may be renewed for a briefing schedule by either party at a later date. Accordingly,

**IT IS ORDERED:**

1. Counsel shall file a joint status report concerning the status of this case on **January 28, 2015**, and every six months thereafter, such report shall include counsel's

position(s) concerning whether the stay should continue in effect or whether the stay should be lifted.

2. The plaintiff's Amended Motion for Class Certification (Filing No. 47) is held in abeyance pending a motion by either party to establish a briefing schedule.

3. The Clerk of Court shall terminate the plaintiff's Amended Motion for Class Certification (Filing No. 47) for statistical purposes.

Dated this 15th day of August, 2014.

BY THE COURT:

s/ Thomas D. Thalken  
United States Magistrate Judge